



Chairperson: Bob Wyatt, NW Natural
Treasurer: Frederick Wolf, DBA, Legacy Site Services for Arkema

April 29, 2013

Regional Administrator Dennis McLerran
U.S. EPA Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Re: Request for Withdrawal of Stipulated Penalties (Lower Willamette River, Portland Harbor Superfund Site, USEPA Docket No: CERCLA-10-2001-0240)

Dear Mr. McLerran:

This letter responds to the April 10, 2013 letter from EPA that notified the Lower Willamette Group (LWG) of EPA's decision to assess stipulated penalties related to the Baseline Human Health Risk Assessment (BHHRA). The LWG appreciates this opportunity to present to you informally its reasons why EPA should reconsider the penalty and exercise its enforcement discretion to withdraw the fine.

The LWG's primary goal is to prepare a technically and legally sound RI/FS (including the BHHRA) that complies with the LWG's Administrative Settlement Agreement and Order on Consent (AOC), is consistent with the National Contingency Plan, and sets the foundation for selecting a sediment remedy that is protective of human health and the environment. EPA and the LWG have worked together on the RI/FS since shortly after the Portland Harbor Superfund Site was listed in 2000. During the past thirteen years, the LWG has spent more than \$100 million.

We believe that assessing stipulated penalties against the LWG for work associated with the BHHRA was inappropriate for at least the following reasons:

- The final BHHRA was approved by EPA on April 3, 2013 and meets the goals of compliance with the AOC, consistency with the NCP, and providing a sound foundation for remedy selection. In fact, EPA agreed with the numerical calculations and analysis of the draft BHHRA that the LWG presented to EPA for its review in May 2011. EPA stated in its brief on dispute, "EPA had no problems nor did we change the calculations or analysis that made up the majority of the work and effort doing the risk assessment." Oct. 12, 2012 Brief, p. 3. The final approved BHHRA reflects compromises made by both parties to the dispute and is in fact an improved document over the June 2012 EPA version that accompanied the Notice of Noncompliance and that EPA directed the LWG to adopt.
- On June 29, 2012, EPA sent the LWG a letter that stated, "as further stated in Paragraph 1, Section XIX of the Administrative Order on Consent, 'EPA may, at its discretion, waive imposition of stipulated penalties if it determines that Respondents have attempted in good faith to comply with this Order, or have timely cured defects in initial submissions.' EPA shall make this determination after receipt of the revised BHHRA and it has been determined that the corrections required by EPA have been conducted both timely and completely." LWG has met this standard. LWG accepted by September 5, 2012 all revisions to the BHHRA directed by EPA that were not carried forward in the dispute. Of the remaining issues that went forward for

dispute resolution, none of them was raised by EPA as the basis for its Notice of Noncompliance. Following the December 6 Decision on dispute, the LWG timely and completely incorporated all remaining changes to the BHHRA and timely and completely submitted the BHHRA for approval by February 11, 2013, which was the deadline EPA established.

- Members of the LWG are involved in a cost allocation process with non-members of the LWG. We believe that non-members may argue that the LWG costs for the BHHRA should not be recoverable based on the issuance of the stipulated penalty. We believe that this argument is factually and legally incorrect. Nevertheless, the assessment of stipulated penalties presents a hurdle that LWG members would need to overcome, spending significant time and resources to ensure complete recovery of costs. It is inequitable to place the LWG in this position after more than a decade of proactive cooperation, particularly in relation to parties who have chosen not to work with EPA.

Based on the above facts and circumstances, we believe that it is appropriate for EPA to reconsider its decision to assess stipulated penalties. The LWG respectfully requests that EPA eliminate or otherwise withdraw the fine. We appreciate your reconsideration and we look forward to a response to our request.

Sincerely,



Bob Wyatt

cc: Rick Albright
Lori Cohen
Mayor Charlie Hales
Bill Wyatt
Gregg Kantor
Deb Yamamoto
Chip Humphrey
Kristine Koch